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| 10/733,263 | 12/12/2003 | Albert Duranton | 118074 | 8661 |
| 25944 | 7590 | 07/24/2007 | | |
| OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320 | | | EXAMINER MOHANDESI, JILA M | |
| | | | ART UNIT 3728 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/733,263

Applicant(s)

DURANTON, ALBERT

Examiner

/Jila M. Mohandesi/

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/26/2007 & 4/30/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-36 and 38-42 is/are pending in the application.
- 4a) Of the above claim(s) 15-34 and 38-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 35, 36, 41 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 16-34 and 38-40 drawn to an invention nonelected with traverse in the reply filed on 10/06/2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-6, 10, 12-13, 36 and 41 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Christy et al. (US patent 5,786,578). Christy '578 discloses a device comprising: a receptacle (microwaveable plastic container 2 & 3) containing a single dose of treatment substance (microwave-heatable exercise putty); and an

indicator (thermo chromic heat sensitive indicator strip 4) configured to change state as a function of temperature. See Figures 1-4 embodiments and column 5, lines 12-35.

Regarding the actual substance, the actual substance is merely a matter of user preference and entirely obvious to use whatever substance as desired. The receptacle of Christy '578 is capable of holding shampoo, shower gel, a self-tanning substance or a massage oil.

With regard to claim 41, it would have been an obvious matter of design choice to modify the volume of the receptacle, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

The term "a single dose" is a relative term and will depend on the intended use of the substance, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

5. Claims 1-6, 9, 12-13, 36 and 41 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (US patent 6,405,867). Moore'867 discloses a device comprising: a receptacle (satchel 30) containing a single dose of treatment substance (small quantities of sunscreen); and an indicator (thermo-chromic dye included within a layer of material that is laminated to sidewall 31 of satchel 30) configured to change state as a function of temperature. See Figure 4 embodiment and column 359-65.

Regarding the actual substance, the actual substance is merely a matter of user preference and entirely obvious to use whatever substance as desired. The receptacle of Moore'867 is capable of holding shampoo, shower gel, a self-tanning substance or a massage oil.

With regard to claim 41, it would have been an obvious matter of design choice to modify the volume of the receptacle, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

The term "a single dose" is a relative term and will depend on the intended use of the substance, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

6. Claims 11, 35 and 42 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Moore '867 in view of Pitschka (US patent 6,364,112). Moore '867 as described above discloses all the limitations of the claims except for a fixing member allowing the receptacle to be fixed onto other surfaces. Pitschka '112 discloses that it is desirable to provide fixing member (adhesive) on pouches to be fixed onto other surfaces. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a fixing member to the pouch/receptacle of

Moore '867 as taught by Pitschka '112 to secure the promotional pouch to other surfaces to prevent loss of the pouch.

With respect to claim 42 whether the fixing member is adhesive, hook, cord, hook-and-loop, magnet or any other art recognized equivalent is an obvious matter of choice, such as to require less manual dexterity to operate and/or cost and ease of manufacturing.

7. Claim 8 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Moore '867 in view of Dimelis et al. (US patent 5,960,947). Moore '867 as described above discloses all the limitations of the claims except for a flexible support fixed onto the receptacle for allowing the receptacle to be fixed onto other surfaces. Dimelis '947 discloses that it is desirable to provide a flexible support on pouches/receptacles for mounting the pouch onto other surfaces. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flexible support to the pouch/receptacle of Moore '867 as taught by Dimelis '947 to secure the promotional pouch to other surfaces to prevent loss of the pouch.

8. Claim 7 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Moore '867 in view of Bradley et al. (US patent 4,408,557). Moore '867 as described above discloses all the limitations of the claims except for indicator configured to release a volatile odorous substance. Bradley '557 discloses an indicator in which the method of indication can be other than the use of dyes and the appearance of words and symbols. The indicator can contain agents, which, at the combination of integration cycle, release strong odor producing vapors to alert people. Therefore, it would have

been obvious to one of ordinary skill in the art at the time the invention was made to provide agents to the indicator of Moore'867 which, at the combination of integration cycle, release strong odor producing vapors as taught by Bradley '557 to alert the people insofar as they are art-recognized equivalents.

With respect to claim 7, whether the volatile odors are produced by heat or chemical reaction or any other art recognized equivalent is an obvious matter of choice, such as cost and ease of manufacturing.

Response to Arguments

9. Applicant's arguments filed 01/26/2007 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

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references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Moore and are both directed to pouches for holding substance, therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flexible support to the pouch/receptacle of Moore '867 as taught by the pouch/receptacle of Dimelis '947 to secure the promotional pouch to other surfaces and to prevent loss of the pouch.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Jila M. Mohandesi/ whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jila M Mohandesi/
Primary Examiner
Art Unit 3728

JMM
July 13, 2007